IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

AND
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 17054 of 2004

Between:

Sri Gopi Krishna Rice and Flour Mill,
Rep. by its Proprietor, Paruchuri

Durga Prasad,
S/o. P. Gopala Rao, Hindu,
Aged about 46 Years, R/o. 9th Ward,
Nerellapalem, Avanigadda.

..... PETITIONER

AND

1. The Deputy Commercial Tax Officer ((FAC), Avanigadda.
2. The Commercial Tax Officer, Vuyyuru.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order or direction more particularly one in nature of Writ of Mandamus declaring that the demand notice issued by the first respondent U/s. 25 of the APGST Act for payment of Sales Tax as well as Rural Development Act without following the procedure contemplated under the Act as well as Rules, is illegal, without jurisdiction and is in violation of principles of natural justice and consequently set-aside the same.

Counsel for the Petitioner: MR.P.R.PRASAD

Counsel for the Respondents 1 and 2: GP FOR COMMERCIAL TAXES

The Court, at the stage of admission, made the following:

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ORDER (Per MHSA,J):

Petitioner has questioned the demand notice issued by the first respondent. The impugned notices of demand are at pages 12 and 13. The demand notice at page 12 is one issued in Form No.4 of Revenue Recovery Act demanding payment prior to attachment of property.

The notice at page 13 is in Form B2.

The notice in Form B2 is one demanding payment of tax on provisional assessment. It states that the petitioner has been provisionally assessed to tax of Rs.4,64,831/- for the year 2002-2003 after deducting the payments already made. Balance sum due from the petitioner is Rs.4,14,831/-. The notice further states that the same is as per returns filed by the petitioner.

It is contended before us that before issue of B2 Form, no order of assessment has been passed and without an order of assessment, demand in Form B2 cannot be raised.

We find no merit in the said submission as in the case on hand, the Form B2, as noticed above, itself states that provisional assessment is made based on the returns submitted by the assessee. This position has been made further clear from the counter-affidavit filed on behalf of the first respondent wherein it

is stated that the demand in Form B2 was raised for the balance of admitted tax not paid along with the returns. We, therefore, find no merit in the instant writ petition. Same is accordingly dismissed.

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M.H.S.ANSARI, J

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T.CH.SURYA RAO, J

08-02-2005.

Lrkm.

To

1. The Deputy Commercial Tax Officer ((FAC), Avanigadda.
2. The Commercial Tax Officer, Vuyyuru.

3. 2 CCs. To The Government Pleader for Commercial Taxes,
High Court of A.P., High Court Buildings, Hyderabad.

4. 2 CD copies.